

STATE OF NEW YORK

DIVISION OF TAX APPEALS

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In the Matter of the Petition	:	
of	:	
<b>MICHAEL PIETRONUTO</b>	:	ORDER
	:	DTA NO. 825331
for Redetermination of a Deficiency or for Refund of	:	
Personal Income Tax under Article 22 of the Tax Law	:	
for the Years 2008, 2009 and 2010.	:	

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Petitioner, Michael Pietronuto, filed a petition for redetermination of a deficiency or for refund of personal income tax under Article 22 of the Tax Law for the years 2008, 2009 and 2010.

Pursuant to 20 NYCRR 3000.9(a)(4), the Division of Tax Appeals issued a Notice of Intent to Dismiss Petition, dated January 9, 2013, on the grounds that the Division of Tax Appeals lacks jurisdiction of the subject matter of the petition because the petition was not filed in protest of a statutory notice. The Division of Taxation, by its representative, Amanda Hiller, Esq., (John E. Matthews, Esq., of counsel) submitted a letter, dated January 14, 2013, in support of the proposed dismissal. Petitioner, appearing by Roy J. Macchiarola, CPA, was granted an extension until March 11, 2013 to file a response, which commenced the 90-day period to issue this order. Based upon the pleadings in this matter and the responses filed by the Division and petitioner, Thomas C. Sacca, Administrative Law Judge, renders the following order.

### ***ISSUE***

Whether Division of Tax Appeals has subject matter jurisdiction over the petition filed in this matter.

### ***FINDINGS OF FACT***

1. The Division of Taxation (Division) issued to petitioner, Michael Pietronuto, a Notice and Demand for Payment of Tax Due, dated October 11, 2012, which assessed personal income tax for the years 2008, 2009 and 2010 in the amount of \$229,557.00, plus interest.

2. On November 5, 2012, Division of Tax Appeals received a petition challenging the foregoing notice.

3. On January 9, 2013, the Division of Tax Appeals issued a Notice of Intent to Dismiss Petition, which stated, in pertinent part:

The petition in this matter appears to have been filed in protest of a Notice and Demand for Payment of Tax Due, Assessment No. L-036872610, issued to petitioner on October 11, 2012. As such, petitioner's right to a hearing to protest the subject notice is specifically denied by Tax Law § 173-a(2). Accordingly, the protested notice is insufficient to confer jurisdiction upon the Division of Tax Appeals to consider the merits of the petition filed in this matter.

4. The petition filed in this matter states that petitioner did not receive the original notice of deficiency. In a letter dated March 11, 2013, petitioner's representative requested clarification as to whether a notice of deficiency had, in fact, been issued. The Division submitted a letter stating that it agreed with the proposed dismissal.

### ***CONCLUSIONS OF LAW***

A. The Division of Tax Appeals is an adjudicatory body of limited jurisdiction whose powers are confined to those expressly conferred in its authorizing statute (*Matter of Scharff*, Tax Appeals Tribunal, October 4, 1990, *revd on other grounds sub nom Matter of New York*

*State Dept. of Taxation & Fin. v. Tax Appeals Tribunal*, 151 Misc 2d 326 [1991]). Therefore, in the absence of legislative action, this forum cannot extend its authority to disputes that have not been specifically delegated to it (*Matter of Hooper*, Tax Appeals Tribunal, July 1, 2010).

B. In this matter, the petition challenges a Notice and Demand dated October 11, 2012. Upon review, it is concluded that this proceeding must be dismissed because the Division of Tax Appeals lacks jurisdiction to review the document. The Tax Appeals Tribunal is authorized to “provide a hearing as a matter of right, to any petitioner upon such petitioner’s request . . . unless a right to such a hearing is specifically provided for, modified or denied by another provision of this chapter” (Tax Law § 2006[4]). In this instance, the right to a hearing is specifically denied. Tax Law § 173-a(2) provides that a notice and demand “shall not be construed as a notice which gives a person the right to a hearing.” Accordingly, the Division of Tax Appeals is without authority to proceed (*see Matter of Chait*, Tax Appeals Tribunal, April 22, 2010).

C. The petition of Michael Pietronuto is dismissed.

DATED: Albany, New York  
May 23, 2013

/s/ Thomas C. Sacca  
ADMINISTRATIVE LAW JUDGE